

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO**

UNITED STATES OF AMERICA,	)	
	)	
and	)	
	)	
CITY OF STERLING, COLORADO,	)	
	)	Civil Action No.
Plaintiffs,	)	
	)	
v.	)	
	)	
ARISTEDES ZAVARAS,	)	
Executive Director,	)	
State of Colorado	)	
Department of Corrections,	)	
Sterling Correctional Facility,	)	
	)	
and	)	
	)	
STATE OF COLORADO,	)	
	)	
	)	
Defendants.	)	
<hr style="border: 0.5px solid black;"/>		

COMPLAINT

The United States of America, by and through the undersigned attorneys, by authority of the Attorney General of the United States, and at the request of the United States Environmental Protection Agency ("EPA"), alleges as follows:

STATEMENT OF THE CASE

1. This is a civil action pursuant to Section 309(b) and (d) of the Clean Water Act ("the Act" or "CWA"), 33 U.S.C. § 1319(b) and (d), against Aristedes Zavaras, Executive Director, State of Colorado, Department of Corrections, Sterling Correctional Facility; and the

State of Colorado (“Defendants” or “DOC”). Specifically, the United States and the City of Sterling seek civil penalties for Defendants’ discharge of pollutants at the Sterling Correctional Facility in Logan County, Colorado, in violation of Sections 301 and 307 of the Act, 33 U.S.C. §§ 1311, 1317, and local ordinance, City of Sterling, Colo., Sewer System Pretreatment Program (“Sterling SSPP”), Chapter 21, Article V, Sections 21-201 to 21-222.

#### JURISDICTION, VENUE, NOTICE AND AUTHORITY

2. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1345, and 1355, and Section 309(b) and (d) of the CWA, 33 U.S.C. §§ 1319(b) and (d). This Court has jurisdiction over the claims of the City of Sterling, Colorado, asserted under the Sterling SSPP, pursuant to 28 U.S.C. § 1367 (supplemental jurisdiction).

3. Venue is proper in the District of Colorado pursuant to 28 U.S.C. § 1391(b), and Section 309(b) of the Act, 33 U.S.C. § 1319(b), because it is the judicial district where the Defendants are located and where the alleged violations occurred.

4. Pursuant to Section 309(b) of the Act, 33 U.S.C. § 1319(b), notice of the commencement of this action has been given to the State of Colorado, which is a Defendant in this action.

5. Authority to bring this action is vested in the United States Department of Justice by 28 U.S.C. §§ 516, 519, and Section 506 of the CWA, 33 U.S.C. § 1366.

6. Authority to bring the supplemental claims identified in this action is vested in the Sterling SSPP, Chapter 21, Article V, Sections 21-201 to 21-222, as allowed by C.R.S. §§ 25-8-205(1)(d), 25-8-501(5)(a), 25-8-508, 25-8-608 to 610, 31-16-101(2), and 31-35-402(1)(b).

## PARTIES

7. Plaintiff United States of America is acting at the request of and on behalf of the Administrator of the U.S. Environmental Protection Agency (“EPA” or “Administrator”).

8. Plaintiff City of Sterling (“City”) is a municipality located in Logan County, Colorado. The City owns and operates a publicly owned treatment works (“POTW”) in Logan County, at 421 North Fourth Street, Sterling, Colorado, to which the Department of Corrections, Sterling Correctional Facility is connected. The City has jurisdiction over disposal of sewage, industrial wastes, or other wastes and is a “municipality” within the meaning of Section 502(4) of the CWA, 33 U.S.C. § 1362(4), and a “person” within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

9. Defendant Aristedes Zavaras is the Executive Director, Department of Corrections, Sterling Correctional Facility, and is a “person” as that term is defined at Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

10. Defendant State of Colorado owns and operates the Sterling Correctional Facility, located at 12101 Highway 61, Sterling, Colorado 80751, and is a “person” as that term is defined at CWA Section 502(5), 33 U.S.C. § 1362(5).

## FEDERAL STATUTES AND REGULATIONS

11. The objective of the Clean Water Act is to “restore and maintain the chemical, physical and biological integrity” of the waters of the United States. 33 U.S.C. § 1251(a).

12. The CWA, 33 U.S.C. § 1311(a), and implementing regulations, prohibit the discharge of pollutants into navigable waters of the United States by any person, except as in compliance with other sections of the Act, including Section 307, 33 U.S.C. §§ 1317, which

governs activities subject to the Pretreatment Program.

13. “Discharge of a pollutant” as defined in Section 502(12) of the CWA, 33 U.S.C. § 1362(12), means “any addition of any pollutant to navigable waters from any point source.”

14. “Pollutant” as defined Section 502(6) of the CWA, 33 U.S.C. § 1362(6), means “dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes . . . rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water.”

15. “Point source” as defined in Section 502(14) of the CWA, 33 U.S.C. § 1362(14), “means any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure . . . from which pollutants are or may be discharged.”

16. “Navigable waters” as defined by Section 502(7) of the CWA, 33 U.S.C. § 1362(7) are “waters of the United States.”

17. Persons who discharge to a POTW must comply with pretreatment standards, including implementing regulations, governing the introduction of pollutants to the treatment works. See 33 U.S.C. § 1317; 40 C.F.R. Part 403.

18. POTWs are required to develop and enforce specific effluent limits for Indirect or Industrial Users of the treatment works, and may issue permits to ensure compliance with pretreatment standards and requirements. 40 C.F.R. § 403.8(a), (f).

19. Effluent limitations, as defined in 33 U.S.C. § 1362(11), are restrictions on the quantity, rate, and concentration of chemical, physical, biological, and other constituents of wastewater discharges into navigable waters of the United States.

20. DOC discharges its wastewater generated at the Sterling Correctional Facility to the POTW and is, therefore, an Industrial User. 33 U.S.C. § 1362(18); 40 C.F.R. § 403.3(j). DOC was identified by the City of Sterling as a “Significant Industrial User” within the meaning of 40 C.F.R. § 403.3(v), and was issued an Industrial User Permit, Pretreatment Permit No. SCFIUP01 (the “Pretreatment Permit” or “Permit”), that became effective on June 1, 1999.

21. The South Platte River is considered “waters of the United States” within the meaning of 40 C.F.R. § 122.2 and, therefore, a “navigable water” within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

22. EPA approved the City of Sterling’s POTW Pretreatment Program on April 4, 1985. EPA has been and continues to be the “Approval Authority” within the meaning of the pretreatment regulations found in 40 C.F.R. § 403.3(c)

23. Under Section 309(d), a person who violates the Clean Water Act by violating the Pretreatment Standards shall be subject to civil penalties in an amount not to exceed \$27,500 per day per violation of Section 301 of the CWA, 33 U.S.C. § 1311, occurring on or after January 30, 1997, through and including March 15, 2004, and up to \$32,500 per day for each such violation thereafter. CWA § 309(d), 33 U.S.C. § 1319(d), as amended by the Omnibus Consolidated Rescissions and Appropriations Act of 1996, Pub. L. No. 104-134, 61 Fed. Reg. 69, 360 (Dec. 31, 1996).

#### CITY OF STERLING STATUTES AND REGULATIONS

24. Sterling SSPP, Chapter 21, Article V, Section 21-201 confers upon the Director of Public Works (“Director”) for the City of Sterling all powers that are necessary to comply with and represent the City under the Federal Clean Water Act and its implementing regulations.

25. The City's ordinance provides that "[n]o user shall contribute or cause to be contributed . . . any pollutant or wastewater which will interfere with the operation or performance of the City's wastewater facilities." Sterling SSPP, Ch. 21, Art. V, § 21-203(a).

26. The Director may require a user discharging or proposing to discharge wastewater into the City's treatment facilities to obtain a City Wastewater Discharge Permit following the requirements set forth in the Section 21-203. Sterling SSPP, Ch. 21, Art. V, §§ 21-203(c)(2), (3).

27. The term "discharge" as it applies to industrial users means "the discharge or the introduction of non-domestic pollutants into the POTW from any source regulated under Section 307(b) or (c) of the Act (33 U.S.C. §1317)". Sterling SSPP, Ch. 21, Art. V, § 21-202.

28. The term "[i]ndustrial user" means "a source of indirect discharge into the POTW of anything other than domestic waste. This includes all significant industrial users, other industrial process, trade, or business as distinct from domestic waste." Sterling SSPP, Ch. 21, Art. V, § 21-202.

29. The term "pollutant" means "any dredged spoil; solid waste; incinerator residue; sewage; garbage; sewage sludge; munitions; chemical wastes; biological materials; radioactive materials; heat, wrecked or discarded equipment[;] rock; sand; cellar dirt and industrial, municipal, and agricultural waste discharged into water." Sterling SSPP, Ch. 21, Art. V, § 21-202.

30. The term "wastewater" includes "any combination of liquid and water carried wastes from residences, commercial buildings, industrial plants and institutions, together with any ground water, surface water and storm water that may be present." Sterling SSPP, Ch. 21,

Art. V, § 21-202.

31. Pursuant to the Sterling SSPP, Defendant is subject to an administrative fine of up to \$1,000 per day for each violation of the City's Sewer System Pretreatment Program, and the orders, rules, regulations, and permits issued thereunder. Sterling SSPP, Ch. 21, Art. V, § 21-215(f).

#### GENERAL ALLEGATIONS

32. The City owns and operates a POTW located at 421 North Fourth Street, Sterling, Colorado. The POTW receives and treats wastewater from residential, commercial and industrial sources and then discharges this wastewater into the South Platte River.

33. The City "discharges pollutants" within the meaning of Sections 502(6) and (12) of the Act, 33 U.S.C. § 1362(a) and (12), from its POTW through a "point source" within the meaning of Section 502(14) of the Act, 33 U.S.C. § 1362(14) into the South Platte River, which is a "navigable water" within the meaning of Section 502(7) of the Act, 33 U.S.C. § 1362(7), and 40 C.F.R. § 122.2

34. As a Significant Industrial User, DOC must comply with pretreatment standards, including implementing regulations, governing the introduction of pollutants to the POTW. See 33 U.S.C. § 1317; 40 C.F.R. Part 403; see also Sterling SSPP, Ch. 21, Art. V, § 21-203(a). To that end, DOC's Pretreatment Permit includes discharge limitations that it is required to meet. Sterling SSPP, Ch. 21, Art. V, §§ 21-203(c)(2), (3).

35. DOC violated the conditions and limitations of its Pretreatment Permit No. SCFIUP01. Therefore, DOC violated Section 307 of the Act, 33 U.S.C. §§ 1317, which governs

activities subject to the Pretreatment Program. DOC also violated Section 21-203 of the Sterling Code, which addresses prohibitions on discharges to the POTW. Sterling SSPP, Ch. 21, Art. V, § 21-203.

36. Specifically, on May 1, 2003, EPA filed Findings of Violation and Order for Compliance against DOC pursuant to Section 309(a) of the CWA, 33 U.S.C. § 1319(a). The EPA alleged pretreatment violations of 33 U.S.C. § 1317(d) and 40 C.F.R. Part 403. The violations included:

- a. From June 1, 1999 through February 28, 2003, DOC had 619 violations of its flow discharge limits identified in its Pretreatment Permit. Each violation of the flow limits constitutes a violation of DOC's Permit and Section 307(d) of the CWA, 33 U.S.C. § 1317(d), and 40 C.F.R. §§ 403.5(b)(2), (d);
- b. From June 1, 1999 through February 28, 2003, DOC had 24 violations of its Chemical Oxygen Demand ("COD") limits identified in its Pretreatment Permit. Each violation of the COD limits constitutes a violation of DOC's Permit and Section 307(d) of the CWA, 33 U.S.C. § 1317(d), and 40 C.F.R. §§ 403.5(b)(2), (d);
- c. From June 1, 1999 through February 28, 2003, DOC had 810 violations of its Biochemical Oxygen Demand ("BOD") limits identified in its Pretreatment Permit. Each violation of the BOD limits constitutes a violation of DOC's Permit and Section 307(d) of the CWA, 33 U.S.C. § 1317(d), and 40 C.F.R. §§ 403.5(b)(2), (d);
- d. From June 1, 1999 through February 28, 2003, DOC had 8 violations of its



- chloride limits identified in its Pretreatment Permit. Each violation of the chloride limits constitutes a violation of DOC's Permit and Section 307(d) of the CWA, 33 U.S.C. § 1317(d), and 40 C.F.R. §§ 403.5(b)(2), (d);
- e. From June 1, 1999 through February 28, 2003, DOC had 716 violations of its Total Suspended Solids ("TSS") limits identified in its Pretreatment Permit. Each violation of the TSS limits constitutes a violation of DOC's Permit and Section 307(d) of the CWA, 33 U.S.C. § 1317(d), and 40 C.F.R. §§ 403.5(b)(2), (d);
  - f. From June 1, 1999 through February 28, 2003, DOC had 73 violations of its Total Kjeldahl Nitrogen ("TKN") limits identified in its Pretreatment Permit. Each violation of the TKN limits constitutes a violation of DOC's Permit and Section 307(d) of the CWA, 33 U.S.C. § 1317(d), and 40 C.F.R. §§ 403.5(b)(2), (d);
  - g. From June 1, 1999 through February 28, 2003, DOC had 9 violations of its ammonia limits identified in its Pretreatment Permit. Each violation of the ammonia limits constitutes a violation of DOC's Permit and Section 307(d) of the CWA, 33 U.S.C. § 1317(d), and 40 C.F.R. §§ 403.5(b)(2), (d);
  - h. From June 1, 1999 through February 28, 2003, DOC had 22 violations of its oil and grease limits identified in its Pretreatment Permit. Each violation of the oil and grease limits constitutes a violation of DOC's Permit and Section 307(d) of the CWA, 33 U.S.C. § 1317(d), and 40 C.F.R. §§ 403.5(b)(2), (d);
  - i. From June 1, 1999 through February 28, 2003, DOC had 2 violations of its pH limits identified in its Pretreatment Permit. Each violation of the pH limits constitutes a violation of DOC's Permit and Section 307(d) of the CWA, 33

U.S.C. § 1317(d), and 40 C.F.R. §§ 403.5(b)(2), (d);

- j. From June 1, 1999 through August 26, 2002, DOC failed 924 times to continuously monitor and record pH readings on DOC's pH meter. Each violation of the pH monitoring requirement constitutes a violation of DOC's Permit and Section 307(d) of the CWA, 33 U.S.C. § 1317(d).

37. On July 19, 2002, the City of Sterling, a municipal corporation, filed Findings of Fact, Conclusions of Law, Penalty Assessment and Administrative Order against DOC pursuant to Sterling SSPP, Chapter 21, Article V, Sections 21-201 to 21-222. The City of Sterling alleged 4,675 pretreatment violations of Sterling SSPP, Chapter 21, Article V, Sections 21-201 to 21-222. The violations were as follows:

- a. From June 1, 1999 through May 31, 2002, DOC had 475 violations of its flow discharge limits identified in its Pretreatment Permit. Each violation of the flow limits constitutes a violation of DOC's Permit and Sterling SSPP, Chapter 21, Article V, Sections 21-203 and 214;
- b. From June 1, 1999 through May 31, 2002, DOC had 701 violations of its Biochemical Oxygen Demand ("BOD") limits identified in its Pretreatment Permit. Each violation of the BOD limits constitutes a violation of DOC's Pretreatment Permit and Sterling SSPP, Chapter 21, Article V, Sections 21-203, 206 and 214;
- c. From June 1, 1999 through May 31, 2002, DOC had 8 violations of its chloride limits identified in its Pretreatment Permit. Each violation of the chloride limits constitutes a violation of DOC's Pretreatment Permit and Sterling SSPP, Chapter

21, Article V, Sections 21-203 and 214;

- d. From June 1, 1999 through May 31, 2002, DOC had 624 violations of its Total Suspended Solids ("TSS") limits identified in its Pretreatment Permit. Each violation of the TSS limits constitutes a violation of DOC's Pretreatment Permit and Sterling SSPP, Chapter 21, Article V, Sections 21-203, 206 and 214;
- e. From June 1, 1999 through May 31, 2002, DOC had 67 violations of its Total Kjeldahl Nitrogen ("TKN") limits identified in its Pretreatment Permit. Each violation of the TKN limits constitute a violation of DOC's Pretreatment Permit and Sterling SSPP, Chapter 21, Article V, Sections 21-203, 206 and 214;
- f. From June 1, 1999 through May 31, 2002, DOC had 8 violations of its ammonia limits identified in its Pretreatment Permit. Each violation of the ammonia limits constitutes a violation of DOC's Pretreatment Permit and Sterling SSPP, Chapter 21, Article V, Sections 21-203, 206 and 214;
- g. From June 1, 1999 through May 31, 2002, DOC had 33 violations of its oil and grease limits identified in its Pretreatment Permit. Each violation of the oil and grease limits constitutes a violation of DOC's Pretreatment Permit and Sterling SSPP, Chapter 21, Article V, Sections 21-203, 206 and 214;
- h. From June 1, 1999 through May 31, 2002, DOC had 2 violations of its pH limits identified in its Pretreatment Permit. Each violation of the pH limits constitutes a violation of DOC's Pretreatment Permit and Sterling SSPP, Chapter 21, Article V, Sections 21-203 and 214;
- i. From June 1, 1999 through May 1, 2002, the City of Sterling issued 1,857 Notices

of Violations (“NOVs”) of DOC’s permit. DOC failed to respond to 1,832 NOVs from the City of Sterling. Each failure to respond to a NOV issued by the City of Sterling constitutes a violation of Sterling SSPP, Chapter 21, Article V, Section 21-215;

- j. From June 1, 1999 through May 31, 2002, DOC failed for 924 days to continuously monitor and record pH readings on DOC’s pH meter. Each violation of the pH monitoring requirement constitutes a violation of DOC’s Pretreatment Permit and Sterling SSPP, Chapter 21, Article V, Section 21-212.
- k. On April 24, 2002, DOC failed to provide access for inspection and monitoring to the City of Sterling during a scheduled audit of the facility. Specifically, DOC denied access to its Chemical Inventory, which made it impossible to determine if DOC had complied with monthly notification requirements for changes in the Chemical Inventory. The denial of access for inspection and monitoring constituted a violation of DOC’s Pretreatment Permit, and Sterling SSPP, Chapter 21, Article V, Section 21-213(a).

#### CLAIM FOR RELIEF (CLEAN WATER ACT)

- 38. Paragraphs 1 through 37 are re-alleged and incorporated herein by reference.
- 39. On various dates from June 1999 through February 2003, DOC violated the limitations, terms and conditions of its Pretreatment Permit, as identified in Paragraph 36, above.
- 40. Each of the foregoing violations constitutes a separate violation of DOC’s Pretreatment Permit and Section 307(d) of the CWA, 33 U.S.C. § 1317(d), and 40 CFR §§

403.5(b)(2) and 403.5(d).

41. Pursuant to Section 309(d) of the CWA, 33 U.S.C. § 1319(d), Defendants are subject to civil penalties in an amount not to exceed \$27,500 per day per violation of Section 301 of the CWA, 33 U.S.C. § 1311, occurring on or after January 30, 1997, through and including March 15, 2004, and up to \$32,500 per day for each such violation thereafter. CWA § 309(d), 33 U.S.C. § 1319(d), as amended by the Omnibus Consolidated Rescissions and Appropriations Act of 1996, Pub. L. No. 104-134, 61 Fed. Reg. 69, 360 (Dec. 31, 1996).

CITY OF STERLING'S SUPPLEMENTAL CLAIM FOR RELIEF

42. Paragraphs 1 through 41 are re-alleged and incorporated herein by reference.

43. On various dates from June 1999 through May 2002, DOC violated the limitations, terms and conditions of its Pretreatment Permit, as identified in Paragraphs 37, above.

44. Each of the foregoing violations constitutes a separate violation of DOC's Pretreatment Permit and Sterling SSPP, Chapter 21, Article V, Sections 21-201 to 21-222.

45. Pursuant to the Sterling SSPP, Chapter 21, Article V, Section 21-215(f), Defendants are subject to an administrative fine of up to \$1,000 per day for each violation of the City's Sewer System Pretreatment Program, and the orders, rules, regulations, and permits issued thereunder. Sterling SSPP, Ch. 21, Art. V, § 21-215(f).

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, the United States of America and the City of Sterling, prays that the Court:

1. Enter a judgment assessing civil penalties against Defendants in an amount not to

exceed \$27,500 per day per violation of Section 301 of the CWA, 33 U.S.C. § 1311, occurring on or after January 30, 1997, through and including March 15, 2004;

2. Enter a judgment assessing an administrative fine against Defendants in an amount not to exceed \$1,000 per day for each violation of the City's Sewer System Pretreatment Program, and the orders, rules, regulations, and permits issued thereunder. Sterling SSPP, Ch. 21, Art. V, § 21-215(f).

3. Grant the United States and the City of Sterling such further relief as the Court may deem just and proper.

Respectfully submitted,

FOR THE UNITED STATES OF AMERICA:

---

W. BENJAMIN FISHEROW  
Deputy Section Chief  
Environmental Enforcement Section  
U.S. Department of Justice  
Post Office Box 7611  
Washington, D.C. 20044-7611.

---

HEIDI KUKIS HOFFMAN  
Trial Attorney  
Environmental Enforcement Section  
United States Department of Justice  
1961 Stout Street – 8<sup>th</sup> Floor  
Denver, Colorado 80294  
(303) 844-1392

TROY A. EID  
United States Attorney  
District of Colorado

---

STEPHEN D. TAYLOR  
Assistant United States Attorney  
District of Colorado  
1225 Seventeenth Street  
Suite 700  
Seventeenth Street Plaza  
Denver, Colorado 80202  
(303) 454-0100

Respectfully submitted,

FOR THE CITY OF STERLING:

---

JERRY W. RAISCH  
Counsel, City of Sterling  
Vranesh and Raisch, LLP  
P.O. Box 871  
Boulder, Colorado 80306  
(303) 443-6151